

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Stephen Morris at 10:40 a.m. on February 17, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Christine Downey - excused

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Assistant Revisor of Statutes
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Barbara Tombs, Executive Director, Kansas Sentencing Commission

Others attending: See attached list

Chairman Morris referred the following bill to the KPERS Issues subcommittee:

HB 2014—Retirement annuities for members of legislature for past service

The Chairman welcomed Barbara Tombs, Executive Director, Kansas Sentencing Commission, who presented an overview of FY 2003 Adult Inmate Prison Population Projections (Attachment 1). Ms. Tombs distributed information regarding Sentencing Range - Non Drug Offenses (Attachment 2). Ms. Tombs expressed concern regarding prison population. She mentioned that even if there was a decrease in rate of admissions from here on over the next five years – will still run out of prison beds because the length of stays are so long. Decrease in admissions would not solve the problem. Ms. Tombs explained regarding projections the stacking is coming into effect. Chairman Morris mentioned that the bottom line is that we are looking at significant numbers in prison population increasing over the next several years. Ms. Tombs mentioned that long term planning is necessary. Committee questions and discussion followed.

In her testimony, Ms. Tombs addressed Proposed Alternative Sentencing Policy for Drug Offenders (Attachment 3). Committee questions and discussion followed. Chairman Morris mentioned that this is an example where the committee has to consider the financial impact with very difficult decision.

Copies of a letter were distributed to the committee from Janis DeBoer, Acting Secretary, Kansas Department on Aging, in response to committee questions (Attachment 4).

The meeting adjourned at 11:50 a.m. The next meeting is scheduled for February 19, 2003.

SENATE WAYS AND MEANS COMMITTEE

GUEST LIST

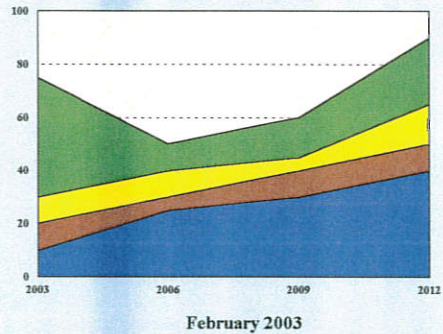
DATE February 17, 2003

NAME	REPRESENTING
Bob Jomb's	KSC
Brenda Harmon	KSC
Paul Johnson	PACK
Nancy Saleen	(intern)

KANSAS SENTENCING COMMISSION

Fiscal Year 2003 Adult Inmate Prison Population Projections

Senate Ways & Means Committee



GUIDELINE (NEW LAW) ADMISSION CHARACTERISTICS-FISCAL YEAR 2002

ID GROUP	NUMBER ADMITTED	PERCENT ADMITTED	AVERAGE SENTENCE (MONTHS)	JAIL CREDIT (DAYS)	CONDITION PROBATION VIOLATORS (%)	PROBATION VIOLATORS W/NEW SENT (%)
D1	209	6.2%	91.1	148.0	2.4	4.8
D2	110	3.3%	53.1	139.1	12.7	6.4
D3	265	7.8%	26.8	128.1	36.2	7.2
D4	451	13.4%	20.0	121.0	58.1	4.7
N1	61	1.8%	245.7	202.7	4.9	3.3
N2	37	1.1%	178.8	306.5	N/A	N/A
N3	239	7.1%	91.2	179.8	8.8	3.8
N4	74	2.2%	66.5	190.0	12.2	N/A
N5	287	8.5%	51.6	187.5	24.0	6.3
N6	69	2.0%	35.0	167.2	31.9	10.1
N7	550	16.3%	24.0	156.3	60.5	10.2
N8	261	7.7%	16.0	129.5	59.0	11.9
N9	547	16.2%	11.1	110.4	63.4	6.0
N10	166	4.9%	7.4	89.5	63.3	3.0
OFF GRID	28	0.8%	-	-	N/A	N/A
TOTAL NEW LAW	3354	99.3%	65.0	142.8	43.1	6.6
TOTAL OLD LAW	19	0.6%				
MISSING/ NONGRID	4	0.1%				
TOTAL ADMITS	3377	100.0%				

Source: DOC admission file.

Senate Ways and Means
2-17-03
Attachment 1

PRISON POPULATION CHARACTERISTICS JUNE 30, 2002

ID GROUP	OLD LAW		NEW LAW		TOTAL	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
D1	3	0.0%	358	4.1%	361	4.1%
D2	6	0.1%	325	3.7%	331	3.8%
D3	15	0.2%	398	4.5%	413	4.7%
D4	1	0.0%	457	5.2%	458	5.2%
N1	242	2.8%	371	4.2%	613	7.0%
N2	199	2.3%	289	3.3%	488	5.6%
N3	199	2.3%	984	11.2%	1183	13.5%
N4	26	0.3%	238	2.7%	264	3.0%
N5	46	0.5%	819	9.4%	865	9.9%
N6	12	0.1%	140	1.6%	152	1.7%
N7	7	0.1%	719	8.2%	726	8.3%
N8	1	0.0%	191	2.2%	192	2.2%
N9	1	0.0%	256	2.9%	257	2.9%
N10	1	0.0%	44	0.5%	45	0.5%
OFF GRID	351	4.0%	164	1.9%	515	5.9%
Parole Conditional Violators	832	9.5%	505	5.8%	1337	15.3%
Aggregate Sentence	534	6.1%	0	0.0%	534	6.1%
SUBTOTAL	2476	28.3%	6258	71.4%	8734	99.7%
MISSING/NONGRID					25	0.3%
TOTAL					8759	100.0%

Source: DCC prison population file.

**COMPARATIVE ANALYSIS ON ADMISSION TYPE
FY 1998 THROUGH FY 2002**

Admission Type	FY 1998		FY 1999		FY 2000		FY 2001		FY 2002	
	N	%	N	%	N	%	N	%	N	%
New Court Commitment	1247	22.9	1340	22.7	1328	20.4	1601	26.7	1702	28.4
Probation Condition Violator	1515	27.9	1579	26.8	1441	22.1	1330	22.2	1454	24.2
Probation Violator With New Sentence	204	3.8	226	3.8	212	3.3	203	3.4	221	3.7
Inmate Received on Interstate Compact	11	0.2	10	0.2	16	0.2	8	0.1	9	0.2
Parole/Post-release Condition Violator	1847	34.0	2236	37.9	3084	47.4	2552	42.6	2396	39.9
Parole/Post-release Violator With New Sentence	262	4.8	295	5.0	284	4.4	145	2.4	136	2.3
Paroled to Detainer Returned With New Sentence	19	0.3	28	0.5	32	0.5	30	0.5	19	0.3
Conditional Release Violator	113	2.1	118	2.0	104	1.6	109	1.8	57	1.0
Conditional Release Violator With New Sentence	15	0.3	13	0.2	7	0.1	10	0.2	3	0.1
Offender Returned to Prison in Lieu of Revocation	206	3.8	56	0.9	5	0.1	1	0.0	2	0.0
Total	5439	100.0	5901	100.0	6513	100.0	5989	100.0	5999	100.0

Source: DCC admission file.

**COMPARISON OF GUIDELINE NEW COMMITMENTS BY SEVERITY LEVEL
ADMISSIONS AND AVERAGE LENGTH OF SENTENCE (LOS)
FY 1998 THROUGH FY 2002**

Severity Level	FY 1998		FY 1999		FY 2000		FY 2001		FY 2002	
	Admission Number	LOS in Month	Admission Number	LOS in Month	Admission Number	LOS in Month	Admission Number	LOS in Month	Admission Number	LOS in Month
D1	5	124.2	10	104.9	26	95.8	101	91.6	209	91.1
D2	67	53.3	84	53.8	97	52.3	83	56.2	110	53.1
D3	263	25.0	277	25.7	255	27.1	258	28.1	265	26.8
D4	366	16.6	397	21.0	398	17.8	440	19.5	451	20.0
N1	17	308.5	48	391.1	52	299.0	77	335.0	61	245.7
N2	65	268.1	42	186.8	48	193.4	37	180.1	37	178.8
N3	187	90.2	190	78.8	204	89.8	211	99.4	239	91.2
N4	64	69.1	56	70.0	55	68.0	57	67.8	74	66.5
N5	224	50.1	236	53.6	226	54.0	276	55.7	287	51.6
N6	62	34.6	72	32.9	71	29.9	61	31.2	69	35.0
N7	427	23.7	448	27.5	439	26.4	515	25.5	550	24.0
N8	269	15.7	289	16.5	295	15.5	261	16.3	261	16.0
N9	576	11.5	623	12.2	568	10.5	553	11.2	547	11.1
N10	129	7.7	141	9.1	125	7.0	135	7.8	166	7.4
Total	2721		2913		2859		3065		3326	

Source: DOC admission files.

Note: Guideline new commitment admissions include new court commitments, probation condition violators and probation violators with new sentence.

KANSAS PRISON POPULATION TRENDS

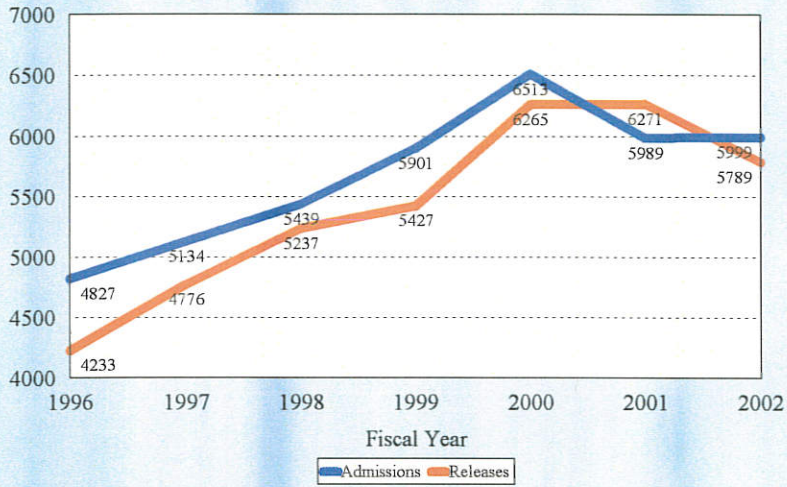
Total Prison Population



Source: DOC prison population files

KANSAS PRISON POPULATION TRENDS

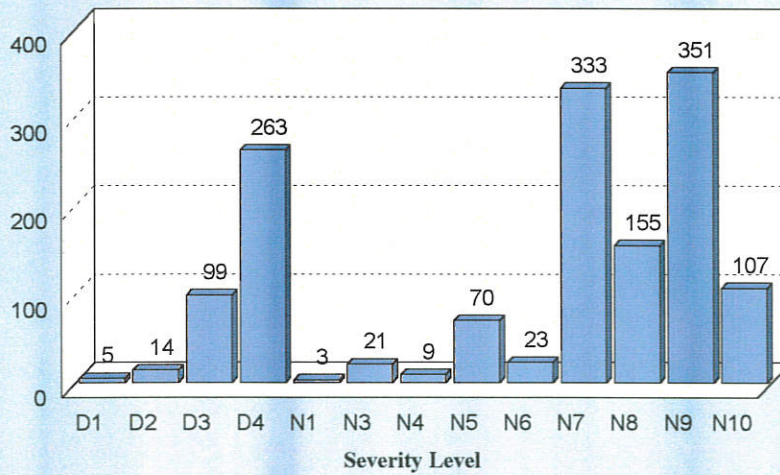
Admissions and Releases



Source: DOC admission and release files

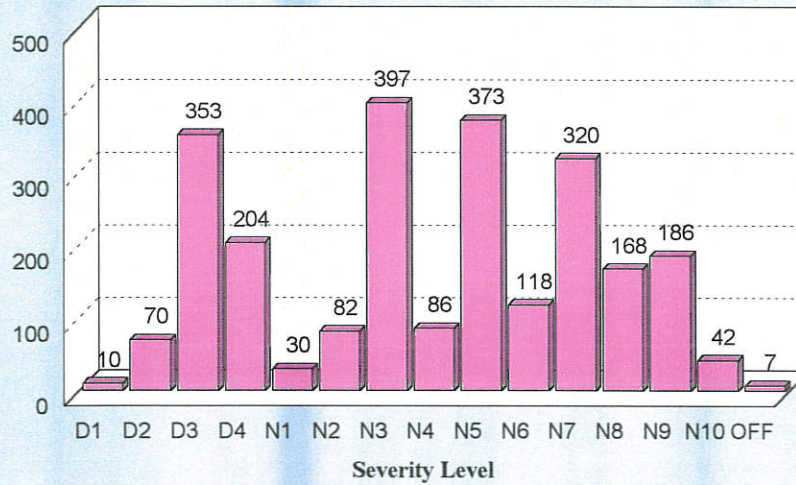
KANSAS PRISON ADMISSION TRENDS

Condition Probation Violators by Severity Level FY 2002



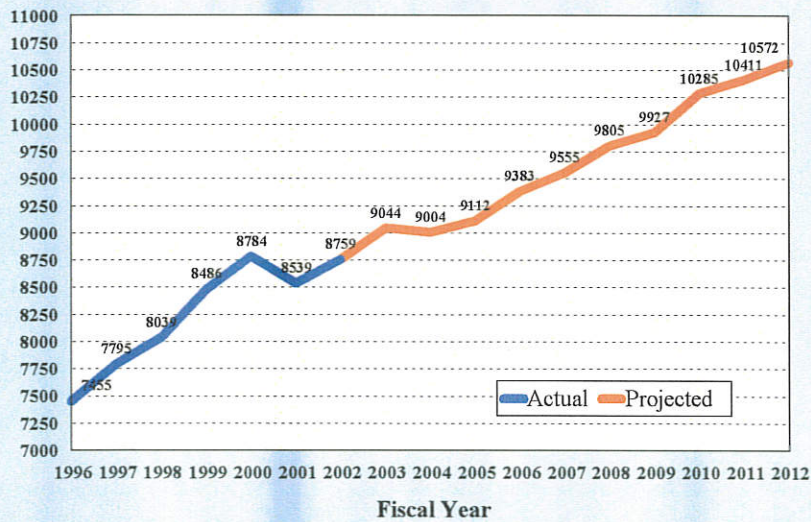
KANSAS PRISON ADMISSION TRENDS

Parole/Postrelease Condition Violators by Severity Level FY 2002



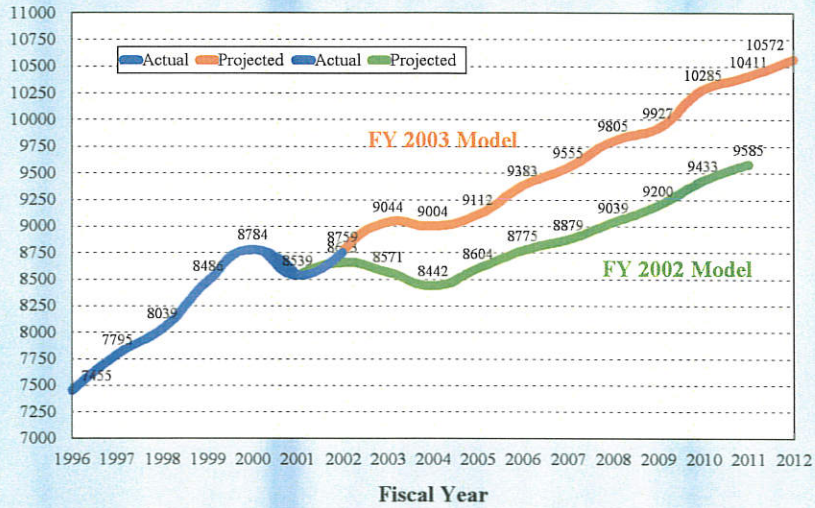
KANSAS PRISON POPULATION TRENDS

Actual and Projected Population



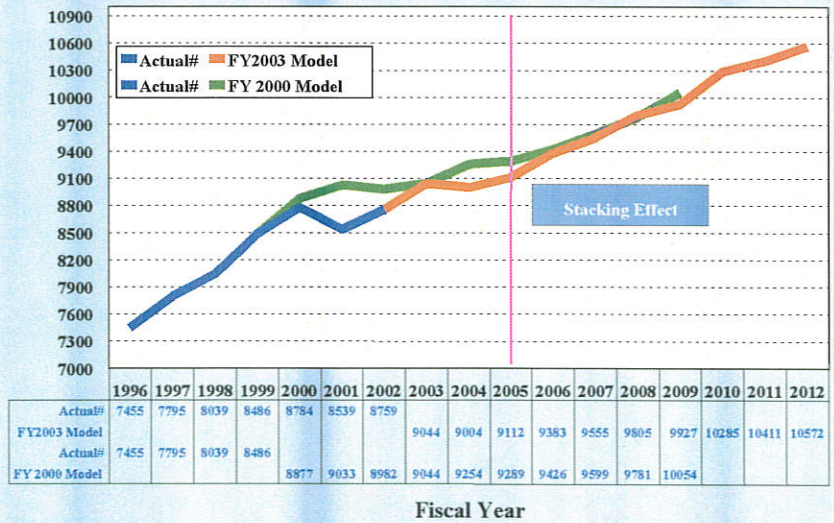
KANSAS PRISON POPULATION TRENDS

Actual and Projected Population Comparison between FY 2002 and FY 2003 Models

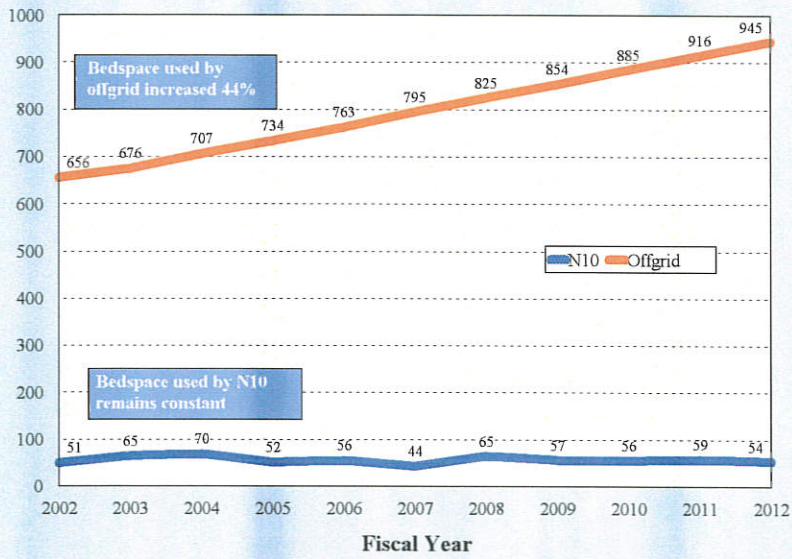


KANSAS PRISON POPULATION TRENDS

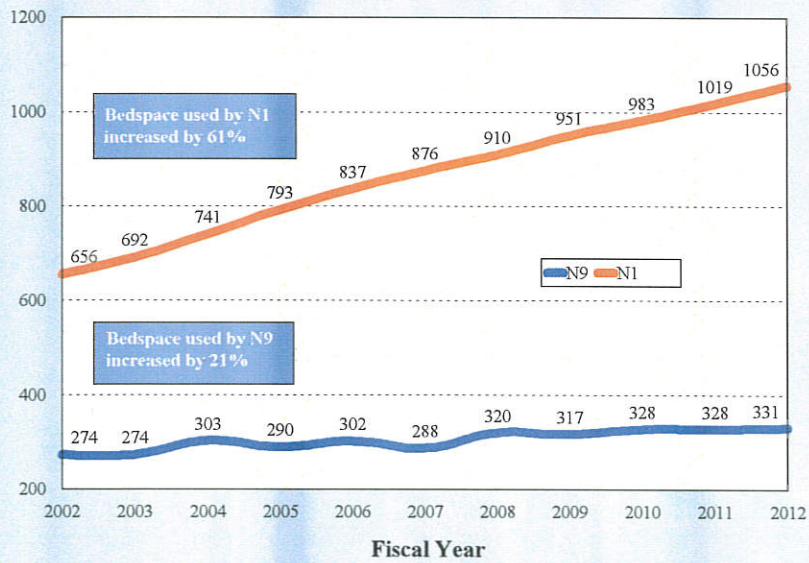
Actual and Projected Population FY 2000 and FY 2003 Models



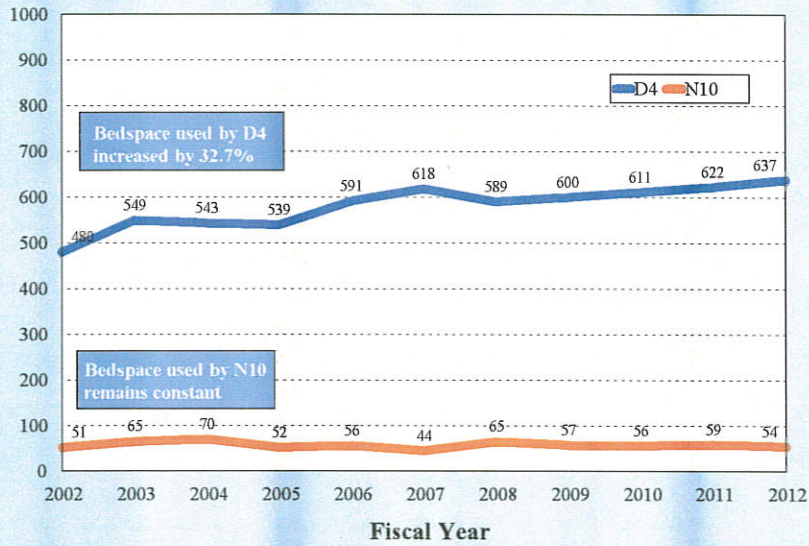
PROJECTED BEDSPACE FOR OFFGRID AND NONDRUG LEVEL 10 OFFENDERS



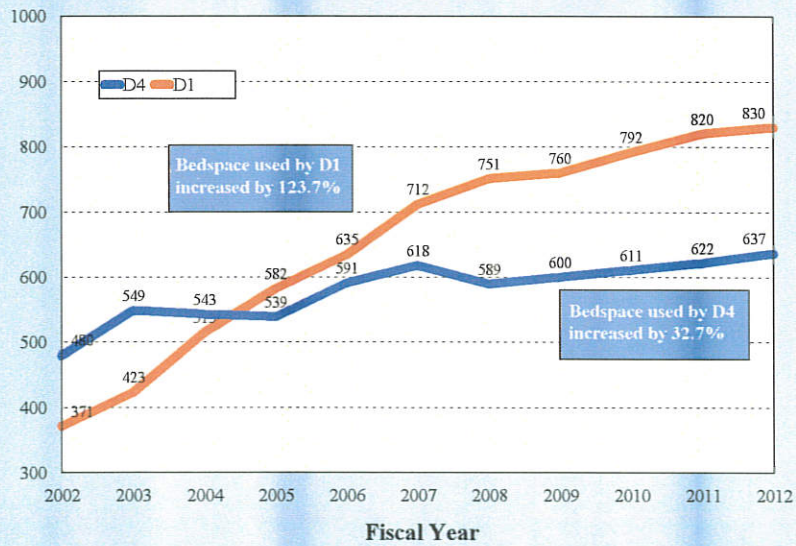
PROJECTED BEDSPACE FOR NONDRUG LEVEL 1 AND NONDRUG LEVEL 9 OFFENDERS



PROJECTED BEDSPACE FOR DRUG LEVEL 4 AND NONDRUG LEVEL 10 OFFENDI



PROJECTED BEDSPACE FOR DRUG LEVEL 1 AND DRUG LEVEL 4 OFFENDERS



OLD

KANSAS SENTENCING COMMISSION
 FY 2002 OFFICIAL ADULT INMATE PRISON POPULATION PROJECTIONS
 Half Percent Admission Growth Rate

ID Group	June 30 2001*	June 30 2002	June 30 2003	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008	June 30 2009	June 30 2010	June 30 2011	TOTAL # INCREASE	PERCENT INCREASE
D1	164	243	294	328	335	363	375	382	387	415	410	246	150.0%
D2	303	288	288	292	311	314	327	342	335	324	322	19	6.3%
D3	435	420	438	426	453	492	485	471	472	494	493	58	13.3%
D4	440	451	451	500	547	541	519	511	501	501	526	86	19.3%
N1	618	668	738	799	849	899	936	973	1023	1070	1102	484	78.3%
N2	512	512	523	532	546	556	555	569	571	577	595	83	16.2%
N3	1247	1275	1289	1322	1360	1385	1404	1454	1473	1503	1554	307	24.6%
N4	276	275	277	272	278	280	274	274	275	277	276	0	0.0%
N5	894	842	865	881	881	876	899	917	949	1002	1031	137	15.3%
N6	167	142	130	124	126	123	123	117	121	132	107	-60	-35.9%
N7	764	722	697	697	735	739	763	792	793	793	790	26	3.4%
N8	242	257	256	270	244	255	247	249	249	261	267	25	10.3%
N9	295	258	211	161	153	144	158	146	159	163	168	-127	-43.1%
N10	48	54	47	47	54	62	55	57	59	68	54	6	12.2%
OFF GRID	599	626	651	682	710	743	775	806	843	872	900	301	50.3%
Condition Parole Violators	1535	1630	1416	1109	1022	1003	984	979	990	981	990	-545	-35.5%
Total	8539	8663	8571	8442	8604	8775	8879	9039	9200	9433	9585	1046	12.3%

* Based on the actual prison population on that date (for the purpose of forecasting, merged and missing are analyzed and assigned to each level).

NEW

KANSAS SENTENCING COMMISSION
 FY 2003 OFFICIAL ADULT INMATE PRISON POPULATION PROJECTIONS
 One Point Five Percent Admission Growth Rate

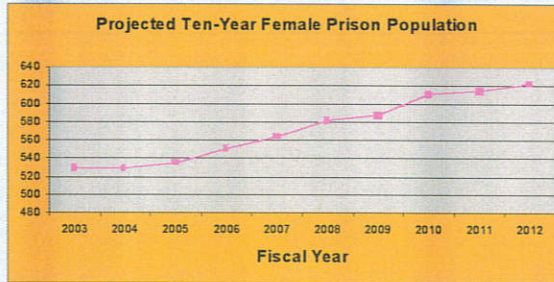
ID Group	June 30 2002*	June 30 2003	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008	June 30 2009	June 30 2010	June 30 2011	June 30 2012	TOTAL # INCREASE	PERCENT INCREASE
D1**	371	423	515	582	635	712	751	760	792	820	830	459	123.7%
D2	340	337	345	367	374	405	442	445	460	439	435	95	27.9%
D3	427	433	445	450	464	475	485	458	481	478	488	61	14.3%
D4**	480	549	543	539	591	618	589	600	611	622	637	157	32.7%
N1	656	692	741	793	837	876	910	951	983	1019	1056	400	61.0%
N2	509	511	520	532	548	562	576	596	594	608	612	103	20.2%
N3	1246	1323	1380	1431	1487	1514	1529	1592	1638	1651	1689	443	35.6%
N4	276	278	295	305	323	319	339	331	345	356	358	82	29.7%
N5	921	946	907	900	896	912	925	937	982	994	998	77	8.4%
N6	160	165	170	177	183	182	189	171	189	186	198	38	23.8%
N7	758	758	778	808	829	835	841	828	843	864	852	94	12.4%
N8	212	213	207	205	195	190	193	210	222	214	211	-1	-0.5%
N9	274	274	303	290	302	288	320	317	328	328	331	57	20.8%
N10	51	65	70	52	56	44	65	57	56	59	54	3	5.9%
OFF GRID	656	676	707	734	763	795	825	854	885	916	945	289	44.1%
Condition Parole PIS Violators	1422	1401	1077	947	900	828	826	820	876	857	878	-544	-38.3%
Total	8759	9044	9003	9112	9383	9555	9805	9927	10285	10411	10572	1813	20.7%

* Based on the actual prison population on that date (for the purpose of forecasting, merged and missing are analyzed and assigned to each level).

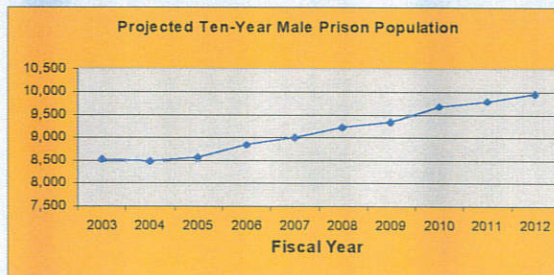
**Kansas Sentencing Commission
Ten-Year Custody Classification Projections
FY 2003 Through FY 2012**

June 30, Each Year	Unclassified	Minimum	Medium	Maximum	Special	Total
2003	148	2966	3921	1405	604	9044
2004	134	2975	3910	1355	629	9003
2005	145	2977	3932	1418	640	9112
2006	145	3071	4044	1446	677	9383
2007	139	3150	4153	1449	664	9555
2008	139	3247	4298	1466	655	9805
2009	139	3267	4380	1509	632	9927
2010	160	3439	4510	1500	676	10285
2011	149	3437	4560	1572	693	10411
2012	156	3447	4687	1578	704	10572

Fiscal Year	
2003	530
2004	529
2005	535
2006	551
2007	564
2008	582
2009	588
2010	611
2011	615
2012	621



Fiscal Year	
2003	8,514
2004	8,474
2005	8,577
2006	8,832
2007	8,991
2008	9,223
2009	9,339
2010	9,674
2011	9,796
2012	9,951



Prison Population Projections by Severity Level and Gender

Female	2,003	2,004	2,005	2,006	2,007	2,008	2,009	2,010	2,011	2,012
D1	49	60	68	74	83	87	88	92	95	96
D2	48	49	52	53	58	63	63	65	62	62
D3	32	33	34	35	36	36	34	36	36	37
D4	53	52	52	57	59	57	58	59	60	61
N1	21	23	25	26	27	28	29	30	32	33
N2	15	16	16	16	17	17	18	18	18	18
N3	36	37	39	40	41	41	43	44	45	46
N4	9	10	10	11	11	11	11	11	12	12
N5	39	37	37	37	37	38	38	40	41	41
N6	6	6	7	7	7	7	6	7	7	8
N7	36	37	39	40	40	40	40	40	41	41
N8	42	41	41	39	38	38	42	44	43	42
N9	19	21	20	21	20	22	22	23	23	23
N10	8	8	6	7	5	8	7	7	7	6
OFF	31	33	34	35	37	38	39	41	42	43
PVTECH	84	65	57	54	50	50	49	53	51	53
Subtotal	530	529	535	551	564	582	588	611	615	621
Male	2,003	2,004	2,005	2,006	2,007	2,008	2,009	2,010	2,011	2,012
D1	374	455	514	561	629	664	672	700	725	734
D2	289	296	315	321	347	379	382	395	377	373
D3	401	412	416	429	439	449	424	445	442	451
D4	486	491	487	534	559	532	542	552	562	576
N1	671	718	768	811	849	882	922	953	987	1,023
N2	496	504	516	532	545	559	578	576	590	594
N3	1,287	1,343	1,392	1,447	1,473	1,488	1,549	1,594	1,606	1,643
N4	269	285	295	312	308	328	320	334	344	346
N5	907	870	863	859	875	887	899	942	953	957
N6	159	164	170	176	175	182	165	182	179	191
N7	722	741	769	789	795	801	788	803	823	811
N8	171	166	164	156	152	155	168	178	171	169
N9	255	282	270	281	268	298	295	305	305	308
N10	57	62	46	49	39	57	50	49	52	48
OFF	645	674	700	728	758	787	815	844	874	902
PVTECH	1,317	1,012	890	846	778	776	771	823	806	825
Subtotal	8,514	8,474	8,577	8,832	8,991	9,223	9,339	9,674	9,796	9,951
Total	9,044	9,003	9,112	9,383	9,555	9,805	9,927	10,285	10,411	10,572

SENTENCING RANGE - NONDRUG OFFENSES

1993

Senate Ways and Means
2-17-03
Attachment 2

Category→	A			B			C			D			E			F			G			H			I		
Severity Level ↓	3 + Person Felonies			2 Person Felonies			1 Person & 1 Nonperson Felonies			1 Person Felony			3 + Nonperson Felonies			2 Nonperson Felonies			1 Nonperson Felony			2 + Misdemeanors			1 Misdemeanor No Record		
I	204	194	185	193	183	173	178	170	161	167	158	150	154	146	138	141	134	127	127	122	115	116	110	104	103	97	92
II	154	146	138	144	137	130	135	128	121	125	119	113	115	109	103	105	100	95	96	91	86	86	82	77	77	73	68
III	103	97	92	95	90	86	89	85	80	83	78	74	77	73	68	69	66	62	64	60	57	59	55	51	51	49	46
IV	86	81	77	81	77	72	75	71	68	69	66	62	64	60	57	59	56	52	52	50	47	48	45	42	43	41	38
V	68	65	61	64	60	57	60	57	53	55	52	50	51	49	46	47	44	41	43	41	38	38	36	34	34	32	31
VI	46	43	40	41	39	37	38	36	34	36	34	32	32	30	28	29	27	25	26	24	22	21	20	19	19	18	17
VII	34	32	30	31	29	27	29	27	25	26	24	22	23	21	19	19	18	17	17	16	15	14	13	12	13	12	11
VIII	23	21	19	20	19	18	19	18	17	17	16	15	15	14	13	13	12	11	11	10	9	11	10	9	9	8	7
IX	17	16	15	15	14	13	13	12	11	13	12	11	11	10	9	10	9	8	9	8	7	8	7	6	7	6	5
X	13	12	11	12	11	10	11	10	9	10	9	8	9	8	7	8	7	6	7	6	5	7	6	5	7	6	5

LEGEND	
Presumptive Probation	[Pattern of vertical lines]
Border Box	[Pattern of vertical lines]
Presumptive Imprisonment	[Pattern of vertical lines]

Recommended probation terms are:
 36 months for felones classified in Severity Levels 1 - 5
 24 months for felones classified in Severity Levels 6 - 10

Postrelease terms are:
 24 months for felones classified in Severity Levels 1 - 6
 12 months for felones classified in Severity Levels 7 - 10

SENTENCING RANGE - DRUG OFFENSES

Category →	A			B			C			D			E			F			G			H			I		
Severity Level ↓	3 + Person Felonies			2 Person Felonies			1 Person & 1 Nonperson Felonies			1 Person Felony			3 + Nonperson Felonies			2 Nonperson Felonies			1 Nonperson Felony			2 + Misdemeanors			1 Misdemeanor No Record		
I	204	194	185	196	186	176	187	178	169	179	170	161	170	162	154	167	158	150	162	154	146	161	150	142	154	146	138
II	83	78	74	77	73	68	72	68	65	68	64	60	62	59	55	59	56	52	57	54	51	54	51	49	51	49	46
III	51	49	46	47	44	41	42	40	37	36	34	32	32	30	28	26	24	23	23	22	20	19	18	17	16	15	14
IV	42	40	37	36	34	32	32	30	28	26	24	23	22	20	18	18	17	16	16	15	14	14	13	12	12	11	10

LEGEND
Presumptive Probation
Presumptive Imprisonment

Recommended probation terms are:

36 months for felonies classified in Severity Levels 1 - 3
 24 months for felonies classified in Severity Level 4

Postrelease supervision terms are:

24 months for felonies classified in Severity Levels 1 - 3
 12 months for felonies classified in Severity Level 4

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1 – 5
- 24 months recommended for felonies classified in Severity Levels 6 – 7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9 - 10

Postrelease terms are:

- 36 months for felonies classified in Severity Levels 1 – 4
- 24 months for felonies classified in Severity Level 5 – 6
- 12 months for felonies classified in Severity Levels 7 - 10

Postrelease for felonies committed before 4/20/95

- 24 months for felonies classified in Severity Levels 1 - 6
- 12 months for felonies classified in Severity Level 7 - 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms:

- 36 months recommended for felonies classified in Severity Levels 1 – 2
- 18 months (up to) for felonies classified in Severity Level 3
- 12 months (up to) for felonies classified in Severity Level 4

Postrelease supervision terms are:

- 36 months for felonies classified in Severity Levels 1 – 2
- 24 months for felonies classified in Severity Level 3
- 12 months for felonies classified in Severity Level 4

Postrelease for felonies committed before 4/20/95

- 24 months for felonies classified in Severity Levels 1 - 3
- 12 months for felonies classified in Severity Level 4

**PROPOSED ALTERNATIVE SENTENCING POLICY
FOR
DRUG OFFENDERS**

Goal of the Alternative Drug Policy – The goal of the alternative drug policy is to provide community punishment and the opportunity for treatment to nonviolent offenders with drug abuse problems in order to more effectively address the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

Target Population – The Sentencing Commission believed it was critical to clearly define the target population of “nonviolent drug offenders” since prior criminal history and potential public safety issues are of great concern. The target population for placement in the mandatory treatment program is defined as follows:

- Current offense of conviction is for drug possession only, does not include manufacturing, drug trafficking or drug possession with intent to sell offenses
- Criminal history classifications of I to E only, no prior person felony convictions
- No prior convictions for drug trafficking, drug manufacturing or drug possession with intent to sale
- Offenders with prior convictions for drug possession would be eligible
- Offenders with prior conviction for person felonies on Non-Drug Severity Level 8, 9, and 10 would be eligible upon the finding of the court that the offender does not pose a significant threat to public safety
- Current Departure procedures would be applicable

Sentencing Policy Changes - Mandatory treatment in lieu of incarceration would result in several changes in our current sentencing practices for offenders convicted of drug possession. These policies would focus on various levels of treatment options, establishment of certain and immediate sanctions for continued drug usage, and a comprehensive continuum of sanctions that include offender accountability, while safe guarding public safety. Since this is a post conviction sentencing policy, all offenders sentenced under the proposed policy would result in a felony conviction.

- All drug possession convictions would be sentenced on Severity Level 4 of the Drug Grid instead of the current practice that enhances the severity level to severity level 1 and 2 for second, third and subsequent possession convictions
- Border Boxes on Severity Level 4 of the Drug Grid would be replaced with presumptive non-prison boxes
- Offenders sentenced under this policy would be subject to a mandatory drug treatment program of up to 18 months
- Possession of marijuana – First conviction for this offense is classified as a misdemeanor and second and subsequent are classified as a felony. The misdemeanor classification will remain in effect for the first conviction but all subsequent simple possession of marijuana convictions would be sentenced as a drug severity level 4 felony offense

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- Upon successful completion of the substance abuse treatment program, the offender would be discharged and not subject to a period of postrelease supervision.

Offender Accountability

- If the offender is unsuccessfully discharged or voluntarily quits the mandatory treatment, the offender would be subject to the entire underlying prison sentence, with no credit for time served in the mandatory treatment program
- Establishment of criteria that would result in the dismissal of the offender from the mandatory treatment program:
 - a) Conviction of a new felony offense other than felony drug possession
 - b) Judicial finding that the offender has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the terms of treatment and supervision
 - c) Absent a judicial finding, condition violations alone will not result in discharge from the treatment program
 - d) Each and every condition violation shall be subject to some form of non-prison sanctions as defined by statute. Non-prison sanction may include, but not limited to, county jail time, fines, community service, intensified treatment, house arrest, electronic monitoring, etc

Retroactivity Provision

- Applicable to Felony Drug Convictions under the Sentencing Guidelines Act only
- The Bill will become effective upon publication in the Kansas Register
- Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of minimum custody will be converted within 60 days of the Bill becoming effective
- Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of medium custody will be converted within 90 days of the Bill becoming effective
- Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of maximum custody will be converted within 120 days of the Bill becoming effective
- All reviews for placement in the mandatory treatment program will be completed within 180 days from the enactment of the bill.

- Upon the effective date of the Bill, all sentencing for new drug possession cases and condition revocations for drug possession, which fit the designated target population, will be subject to the mandatory treatment criteria contained in the Bill
- All possession sentence conversions that result in an offender being eligible for release from a state correctional facility and sentenced to a mandatory treatment program will be subject to review under a “public safety provision” prior to release. The state will have 60 days to bring forth the public safety concern before the District Court and burden will be on the state to prove the public safety issue at hand
- All possession sentence conversions that result in an offender being released from a state correctional facility will be placed under the supervision of Community Corrections while participating in mandatory substance abuse treatment.

Sentencing Conversion

For offenders whose current sentence is for a second, third and subsequent drug possession offense and fall within the target population defined and are determined eligible to have that sentence converted under this proposed policy, the following procedure will be followed:

- First, the offender will be screened under the public safety provision prior to determining release from prison. The offender will then be released to the custody of Community Corrections for placement in the appropriate drug treatment program
- If the offender voluntarily quits the drug treatment program or is unsuccessfully discharged from the treatment program, the offender will be returned to prison to serve the entire remainder of the “original” sentence imposed, with no credit for time served in the treatment program
- Upon completion of the original sentence imposed, the offender will not be subject to a period of postrelease incarceration but be discharged.

Offender Assessment

- Target population will define which offenders will be assessed for placement in a drug treatment program
- Assessment will be done prior to sentencing and will be part of the pre-sentence investigation report (PSI) and available to the Court at the time of sentencing.
- All assessments will be standardized and completed using the
 - 1) Level of Service Inventory-Revised (LSI-R) to determine risk of re-offending
 - 2) ASI and SASI to determine level and degree of substance abuse problem
 - 3) Clinical interview with mental health screening to assess dual diagnosis offenders
- Target population will define Higher Risk offenders will be placed under the supervision of Community Corrections and Lower Risk offenders will be placed under the supervision of Court Services

Treatment Structure

Comprehensive treatment programs will be required to have components that address the four phases of recovery: detoxification, rehabilitation, continuing care/aftercare and relapse prevention. The Commission is recommending the establishment of a state-wide comprehensive drug treatment program to include a continuum of services that allows the offender to move up or down the continuum as the recovery process requires. The statewide treatment program should include at a minimum:

- Core treatment options must be available in every jurisdiction
- Individual jurisdictions should tailor treatment programs to meet specific needs of the local community
- Initially, it may be necessary for residential placements to be outside of an offender's local community especially in rural areas, given the current limited number of facilities available and their geographic locations
- Alcohol treatment will be available in addition to drug treatment when needed or required
- Regardless of the level of substance abuse treatment assessed, all treatment plans will include an aftercare component
- Exploration of increased funding for Drug Courts to enable accommodation of a post-plea drug offender population should vigorously be pursued
- Treatment programs should incorporate family and auxiliary support services
- Establishment of Regional Residential Treatment Facilities will be required. It is recommended that four Community Based Therapeutic Communities be established for offenders with the most severe substance abuse problems. In addition, current residential treatment facilities will require bed expansion to accommodate the projected increase in clients.

Treatment Providers

It is recognized that this specific target population will provide a challenge to many drug treatment providers due to the extent of their anti-social behavior and the criminal component of their drug abusing lifestyle. It is recommended that treatment providers under this policy comply with the following:

- Treatment providers will be required to obtain additional certification through the Department of Corrections in addition to any other state licensing or certification requirements to provide Drug and Alcohol Treatment. Certification will focus on case management, cognitive behavior training and other requirements currently utilized by the Department of Corrections
- Certified Treatment Providers will be placed on a statewide "Preferred Provider List" for the courts and/or the supervising agency for placement of offenders for the appropriate substance abuse treatment
- It will be imperative that Mental Health providers work in unison with Drug and Alcohol Treatment Providers to address the needs of the significant number of anticipated "Dual Diagnosis" offenders and medication requirements of this population. Offenders with both mental illness and substance abuse problems must have both conditions treated simultaneously for effective recovery.

Impact of Proposed Sentencing Policy

As noted earlier, during the calendar year 2002, a total of 2,739 offenders were sentenced for all drug offenses. Of that total, 1,571 offenders were sentenced for the offense of drug possession. The distribution of those 1,571 drug possession sentences indicates that 731 were prison sentences and 1,236 were presumptive non-prison or probation sentences. When the established criteria identifying the target population for placement in the mandatory treatment program is applied (criminal history categories E to I and no prior convictions for drug trafficking or manufacturing), the target population for placement in the mandatory treatment policy totals 1,255 offenders, of which 1,109 offenders received presumptive non-prison sentences and 281 received prison sentences.

Prison admissions during the calendar year 2002 indicate 472 offenders were admitted for drug possession offenses that meet the target population criteria.¹ Of the total number of drug possession offenders admitted to prison 108 offenders were direct court commitments, 239 offenders were condition probation violators and 125 offenders were condition postrelease violators. The distribution of target population calendar year 2002 admissions by severity level², criminal history classification, gender and average length of stay in prison is presented below:

Target Population Prison Admissions by Drug Severity Levels

Severity Level	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
D1	6	2	7	15
D2	35	12	26	73
D4	67	225	92	384
Total	108	239	125	472

Target Population Prison Admissions by Criminal History Category

Criminal History Category	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
E	46	34	49	129
F	20	18	27	65
G	20	49	25	94
H	11	55	18	84
I	11	83	6	100
Total	108	239	125	472

¹ The number of offenders sentenced for drug possession offenses will not equal the number of offenders admitted to prison for drug possession offenses for the same time period due to the lag time between sentencing and actual admission to a state correctional facility.

² There are no drug possession offenses classified as Drug Severity Level 3

Target Population Prison Admissions by Gender

Gender	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
Male	92	185	105	382
Female	16	54	20	90
Total	108	239	125	472

Target Population Admissions - Average Length Stay

Admission Type	Minimum	Mean	Maximum
Direct Court Commit	5 months	35 months	308 months
Probation Violator	3 months	17 months	150 months
Postrelease Violators		92 days	

In calculating the project prison beds savings, certain assumptions were applied in order to ensure that the impact of the policy did not over state the number of anticipated prison beds saved. An 8% public safety detainment in prison rate was applied to second, third and subsequent possession convictions currently serving prison sentences. A 24% failure rate was applied to successful completion of the drug treatment program and return to prison, with 33% failing after 6 months in the program, 33% failing after 12 months in the program and another 33% failing after 15 months in the program. It is assumed that upon admission to prison, the average length of sentence served will be 15 months. In addition, within 120 days of the implementation of the proposed policy, condition postrelease violators are factored out of the projections. The table below presents the projected prison bed savings if the alternative drug sentencing policy is implemented as proposed.

Total Prison Bed Impact Assessment

June of Each Year	If Current Policy Unchanged, Beds Required	If Current Policy Changed, Beds Required	Total Beds Saved
2004	432	49	383
2005	508	96	412
2006	540	87	453
2007	547	93	454
2008	589	93	496
2009	628	97	531
2010	658	87	571
2011	629	88	541
2012	655	98	557
2013	670	99	571

Projected Substance Abuse Treatment Program Needs

In defining the anticipated increase for substance abuse treatment under this proposed policy, both offenders sentenced to prison and offenders who initially received a presumptive non-prison sentence must be considered since the policy mandates treatment for all nonviolent drug possession offenders defined in the target group. Calendar year 2002 sentences identify 1,255 offenders eligible for placement in treatment. Of that total, 89% (1,109) were currently sentenced to presumptive non-prison sentences and may currently be receiving some level of substance abuse treatment, although probably not an appropriate level of treatment. Only 12% (146) of the target group were sentenced directly to prison by the courts. In addition, any one in prison on the date of enactment of this bill, who meets the re-sentencing criteria, would also be placed in a mandatory treatment program.

On December 31, 2002, we had 317 offenders incarcerated in a state correctional facility who would be eligible for potential re-sentencing under the proposed drug policy. The distribution of 317 offenders indicates that 139 were incarcerated as direct court commitments; 151 were condition probation violators and 27 were condition parole violators. Again, violators accounted for 57% of the incarcerated drug possession population on that date, demonstrating the need for treatment.

The Commission projects that the total population for treatment will total 1,439 offenders per year. This figure includes a 5% error rate as to minimize the possibility of under estimating the treatment population. It should be noted that approximately 77% of this total number of offenders have non-prison sentences now and are either in some level of treatment or on a waiting list to enter treatment. Thus, the policy itself does not create a significant increase in the demand for treatment, but rather attempts to ensure that an appropriate level and volume of treatment services are available to meet the current demands and needs of this population.

As stated earlier, the effectiveness of treatment is closely aligned with matching the level of treatment to the substance abuse needs of an offender. There is no one perfect drug treatment program that will work for every offender. To elevate the chances of successful treatment the level of substance abuse problem must be matched with the appropriate treatment, whether that treatment is defined as long-term residential, intensive outpatient, substance abuse education or relapse prevention. Placing an offender in the wrong type or level of treatment does little to address the underlying substance abuse problem. In addition, a continuum of treatment needs to be available so that an offender can move up and down the spectrum of treatment options depending on the needs of that offender.

The Sentencing Commission included treatment providers in discussions relating to level of substance abuse seen by providers and the projected costs of treatment options to adequately provide the required treatment. In addition, the Commission reviewed substance abuse levels encountered from states that have enacted similar drug policy reforms. Information provided to the Commission indicated that:

- 20% of the target population would require extremely high levels of treatment
- 20% of the target population would require high levels of treatment
- 30% of the target population would require medium levels of treatment
- 30% of the target population would require low levels of treatment

The Commission, with the assistance of treatment providers, assigned an average cost to each level of treatment identified using three scenarios that project different lengths of stay in specific programs, as well as movements up and down the continuum of treatment services available. A total costs and an average annual cost per offender are calculated:

Projected Treatment Costs			
Level of Treatment Assessed	Full Range Of Treatment Options	Medium Range Of Treatment Options	Minimal Range Of Treatment Options
Extremely High – 20% 288 Offenders	\$4,406,400	\$2,937,600	\$1,872,000
High – 20% 288 Offenders	\$1,555,200	\$1,324,800	\$1,008,000
Medium – 30% 432 Offenders	\$1,944,000	\$1,512,000	\$ 864,000
Low – 30% 432 Offenders	\$ 972,200	\$ 648,000	\$ 518,400
Relapse Prevention – 100% 1,432 Offenders	\$ 518,040	\$ 518,040	\$ 518,040
Less Current Treatment Costs 358 Offenders	\$ (179,000)	\$ (179,000)	\$ (179,000)
Projected Total Cost 1,432 Offenders	\$9,216,840	\$6,761,440	\$4,601,440
Annual Cost Per Offender	\$ 6,436	\$ 4,722	\$ 3,213

The projected total cost of treatment includes costs for relapse prevention for every offender regardless of the level of treatment assessed. The Commission believes it is critical that aftercare and relapse prevention be provided and funded to enable offenders to successfully reach and maintain a lifestyle that is no longer dependent on drug usage. A cost for offenders currently receiving some level of drug treatment was also factored into the annual costs that were assessed. Information provided to the Commission indicated that approximately one fourth of the offenders who need substance abuse treatment are receiving a minimal level through either participation in Alcoholics Anonymous, Narcotics Anonymous or limited outpatient services, which are in most situations not adequate to address the offender's level of substance abuse. It was projected that the average cost of treatment for this specific population is approximately \$500 per offender. Since this cost is currently being assumed by the criminal justice system, the total cost of the projected treatment was adjusted to reflect that amount.

It was indicated by treatment providers that annual treatment costs vary depending on the volume of offenders participating in treatment, which can reduce the cost per offender. In addition, co-payments from offenders participating in treatment also can impact the total costs of treatment provided. The Commission has attempted to provide a preliminary overview of projected treatment costs, which are in no way to be interpreted as all inclusive but rather as a basis for cost consideration of this proposed alternative sentencing policy for nonviolent drug offenders.

Cost Benefit to the State

The projected prison bed savings from the enactment of this proposed sentencing policy is between 381 to 571 prison beds. The initial projected costs for substance abuse treatment, depending on the level of treatment provided, range from \$4.6 million to \$9.2 million annually or \$3,213 to \$6,436 dollars per offender. The Department of Corrections has indicated that

construction of a cell house at the El Dorado correction facility that would house between 128 to 256 offenders depending on custody classification of the offenders would cost an estimated \$7.1 million dollars; the construction of two cell houses at that same facility would house between 256 to 512 offenders would cost an estimated \$14.4 million dollars. In addition, annual operating costs (minus the one-time start-up costs) would be as follows:

	One Cell House		Two Cell Houses ³	
	128 cell/ 128 inmates	128 cell/ 256 inmates	256 cell/ 256 inmates	256 cell/ 512 inmates
Salaries & Wages	\$2,257,000	\$2,405,000	\$3,258,000	\$3,509,000
Other Operating	286,000	525,000	705,000	1,024,000
Programs	143,000	286,000	286,000	573,000
Health Care	317,000	549,000	549,000	1,355,000
Food Service	191,000	382,000	382,000	764,000
Total	\$3,194,000	\$4,147,000	\$5,180,000	\$7,225,000
<i>Ave\$/Inmate</i>	<i>\$25,000</i>	<i>\$16,200</i>	<i>\$20,200</i>	<i>\$14,100</i>

The Department of Corrections projects the average cost per inmate, without consideration of the \$7.2 to \$14.4 million dollar construction costs, would range from \$14,100 to \$25,000. When compared to the projected average treatment costs per offender of \$3,213 to \$6,436 that involve approximately the same number of prison beds, the direct cost savings to the state is notable. Even if a 25% increase in the cost of treatment per offender is added to cover expansion and administrative expenses, the cost per offender of treatment only becomes \$3,994 to \$8,045 per offender depending of the level of treatment provided. Again, without consideration of the construction and one-time start-up costs, the average cost to incarcerate per inmate ranges between \$14,100 and \$25,000 per year, whereas to place the same number of offenders in treatment would range between \$3,994 and \$8,045 dollars.

In addition, there would be indirect cost savings to the state, such as child support paid, continued employment and taxes paid, less usage of aid to dependant families, less demand on our health care system and more families remaining intact and contributing to their communities. Given the strong correlation that research has shown between drug usage and criminal activity, there is a strong potential to experience a decrease in many property and financial crimes that are closely linked to drug addiction. Will every offender that participates in a drug treatment program be successful? The answer is no. The proposed alternative drug sentencing policy contains provisions and sanctions for those offenders who choose to drop out or are expelled from program. The policy provides for meaningful treatment and the potential for offenders to overcome their substance abuse problems, become productive citizens, while reserving our limited prison beds for serious, violent offenders.

³ Table contained in the Department of Corrections "Committee Overview" to House Committee on Corrections and Juvenile Justice.

Several approaches could be taken to fund the projected costs of treatment including: accessing federal grant funds for treatment activities, such as Drug Court Grants, Residential Substance Abuse Grants and Byrne Grants which all support treatment related programs. Probation fees could be increased by \$5 to \$10 dollars to address the expansion of treatment programs and a half cent tax increase in the state's alcohol tax could be designated to fund treatment programs. Although some state general dollars will be required to leverage federal funds, funding for treatment programs can be drawn from multiple sources. What is imperative to the success of the proposed policy is that adequate funding be available on an ongoing basis for the level and types of treatment required to appropriately address the escalating substance abuse problem. If sufficient funding isn't identified and dedicated for substance abuse treatment, then the impact of the policy is negated and the criminal justice system will revert back to its current process of re-cycling drug offenders and utilizing expensive prison beds to house non-violent offenders.



KANSAS

JANIS L. DEBOER, ACTING SECRETARY

DEPARTMENT ON AGING

KATHLEEN SEBELIUS, GOVERNOR

February 13, 2003

The Honorable Stephen Morris
Chairman, Senate Ways and Means Committee
Statehouse, 123-S
Topeka, Kansas 66612

Dear Senator Morris:

Thank you for the opportunity to respond to questions from the February 10, 2003 meeting of the Senate Ways and Means Committee.

Question 1. How many seniors may go to nursing homes if Senior Care Act services were not provided?

Response: In FY 1999, the Kansas State University School of Family Studies and Human Services interviewed a sample of Senior Care Act (SCA) customers, their caregivers, and case managers to identify how many customers served by the program would have been in a nursing home without the SCA services they received.

The K.S.U. study reported that **45% of customers** interviewed said that they would not be able to remain in their homes without the help from these services. Approximately **49% of caregivers** estimated that their own family member who received SCA services would be forced to enter a nursing home without the services.

Since FY 1999, the functional eligibility requirements have been raised for the Senior Care Act Program. We believe a higher percentage of customers would be unable to remain in their homes without SCA services since program customers must be more disabled and frail than in FY 1999.

Question 2. Is there a legal requirement that the Level of Care score be stated in Statute?

Response: No. However, there is a federal requirement that in order to provide home and community based services to individuals under the HCBS/FE waiver, the Level of Care score must be the same as nursing facilities.

Question 3. What is the impact of raising the Level of Care score for nursing home and Home and Community Based Services for the Frail Elderly (HCBS/FE) customers?

Response: The attached chart provides an analysis of Level of Care (LOC) scores for HCBS/FE and Nursing Home customers. It shows totals for nursing home and HCBS/FE customers combined. We estimate that a total of 301 customers will be impacted by the LOC score change from 26 to 30. There will be no cost savings due to this change because all current customers are grandfathered into the program.

Senator Morris
February 13, 2003
Page Two

Question 4. How many customers on the HCBS/FE waiting list might go to nursing homes and what would the difference in cost for HCBS/FE services and nursing home care?

Response: As of January 23, 2003, out of a total of 985 seniors on the waiting list to receive HCBS/FE services, a total of 36 of those individuals sought permanent nursing facility placement. In FY 2003, the average monthly cost for an HCBS/FE customer is \$896, while the average monthly cost for a Medicaid nursing home customer is estimated at \$2,270. Using those averages, it would cost \$387,072 a year (all funds) to provide HCBS/FE services to those 36 seniors, and \$1,026,824 a year (all funds) to provide nursing home care to those 36 seniors. The annual savings would be \$639,752 (all funds).

Please feel free to contact me if you would like to meet and review the recommendations or if you have further questions or comments at 296-5222. Thank you very much.

Sincerely,



Janis DeBoer
Acting Secretary

cc: Doug Farmer
Phyllis Schaper
Juanita Lewis
Sheli Sweeney

ATTACHMENT

Kansas Department on Aging
Level of Care Scores on Nursing Homes and HCBS Frail Elderly Programs Combined

Level of Care Score	Number
26 to 30	301
31 to 40	693
41 to 50	889
51 to 60	899
61 to 70	992
71 to 80	910
81 to 90	851
91 to 100	430
101 to 110	203
111 to 120	144
121-125	7
Total	6,319

Level of Care Score Less Than:	Estimated Number Of Admissions*	SFY 2003 Average Monthly Cost (see attached)	SFY 2003 Savings for All Funds (see attached)	SFY 2003 State General Fund
30	301			\$493,149
40	994			\$1,838,241
50	1,883			\$4,571,209
60	2,782			\$8,367,307
70	3,774			\$13,404,143
80	4,684			\$18,346,497
90	5,535			\$23,133,722
100	5,965			\$25,630,869
110	6,168			\$26,818,942
120	6,312			\$27,659,273
125	6,319			\$27,700,248

* This assumes admissions are equally distributed with one-twelfth occurring in each month for the HCBS/FE program and assumes admissions are distributed with half the admissions in the first half of the year and half in the second for the NF program.